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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ADAM GREGG,

Plaintiff,

vs.

**TEQUILA THURMAN, CARRIE
HUTCHISON, and JOHN COPIC,**

Defendants.

Case No. 3:23-cv-01801-AN

**DECLARATION OF JESSE
MERRITHEW IN SUPPORT OF
ATTORNEY FEE AWARD**

I, Jesse Merrithew, state under penalty of perjury under the laws of the United States of America, pursuant to 28 USC § 1746, that the following is true and correct:

1. This Court entered an Order on June 21, 2024, awarding Plaintiff attorney fees in connection with the motion to remand filed December 22, 2023. The Court directed counsel to file declarations in support of the requested award. This declaration is responsive to that Order.

2. In our firm, we keep our time contemporaneously using a cloud-based practice management software. It is our firm's policy to keep time in one-tenth (.1) increments, rounded up to the nearest tenth of an hour. I know that this is the prevailing time-keeping practice among most law firms.

DECLARATION OF JESSE MERRITHEW IN SUPPORT OF
ATTORNEY FEE AWARD - 1
(Case No. 3:23-cv-01801-AN)

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3. I have extracted all the time entries logged by firm employees related to the motion to remand and created an invoice for that time only. That document is attached as Exhibit

1. The total fee for the motion and related tasks for all firm employees is \$8,337.50.

4. It is my belief that the work done by my firm on this task was efficient and the amount of hours expended was reasonable. I did all of the legal research and was the primary drafter of the motion and reply, which took a total of 13.3 hours. My partner, Noah Horst, reviewed my drafts and made edits and comments, which I then incorporated before filing. He spent a total of 1.2 hours editing the motion, supporting declaration, and reply. Having another lawyer review my memoranda before filing is a step that I view as both reasonable and essential for good advocacy. It is our firm's policy that nothing be filed without being reviewed by another lawyer in the firm. A total of 14.5 hours to research, draft, and file a motion, supporting declaration, and reply is efficient and reasonable.

5. Both Mr. Horst and I bill at a rate of \$575 per hour. I know this rate to be well within the range of rates charged by lawyers with similar skills and experience in the Portland Metro area. Because my practice is almost exclusively plaintiffs' civil rights cases, I keep apprised of what other attorneys are charging for their services, with special attention to the rates charged by firms engaged in litigation. I know that our claimed rates are significantly lower than the rates charged by our law school classmates who work for medium- and large-sized local law firms engaged in trial practice. This is despite the fact that both Mr. Horst and I have far more experience conducting trials than those peers. We have both been practicing trial-level work since 2007 and have each handled dozens of jury trials. Civil rights litigation is complex, with an array of immunity doctrines to keep apprised of and litigate, and the risk of losing cases is very

high. As a result of these twin dynamics, I know that there is an extreme shortage of capable civil rights lawyers in this state.

6. I know that the district court's local rules require this Court to look to the Oregon State Bar Economic Survey as a starting point in determining a reasonable hourly rate. I generally take issue with using the survey as the exclusive means of determining a reasonable rate, as the survey accounts only for the number of years of practice. It does not tell the court anything about a lawyer's skill, experience, or complexity of practice. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 895 n. 11 (1984); *Moreno v. City of Sacramento*, 534 F.3d 1106, 1114 (9th Cir. 2008). However, the most recent survey, based on information gathered in 2021, does support our claimed rates. It shows that the median rate is \$425 per hour and the 95th percentile rate is \$683 per hour. The three years following 2021 have been a time of rapid inflation. The CPI Inflation Calculator indicates that \$683 in 2021 has the same buying power as \$790 today, and \$425 would equate to \$491. I know that the 95th percentile is likely comprised of our colleagues who also do trial work, but who do so for large corporate clients instead of civil rights plaintiffs, because that rate is consistent with the rates of lawyers described in the preceding paragraph.

7. On October 19, 2021, the Ninth Circuit awarded me \$550 per hour for a successful appeal conducted between June 2020 and October 2021 in *Oregon Advocacy Center et al v. Allen et al*, Case No. 10-35540. Simply adjusting this rate for inflation would result in a rate of \$625 per hour.

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8. Based on the foregoing, I believe that a total fee award of \$8,337.50 is reasonable and ask that the Court so order.

DATED this 11th day of July, 2024.

By: s/ Jesse Merrithew
Jesse Merrithew, OSB No. 074564